

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Marcus Fashaw, #293833,	)	
	)	
Petitioner,	)	C.A. No.: 2:17-cv-1330-PMD-MGB
	)	
v.	)	<b>ORDER</b>
	)	
Warden, MacDougall Correctional	)	
Institution,	)	
	)	
Respondent.	)	
_____	)	

This matter is before the Court on Petitioner’s objections to United States Magistrate Judge Mary Gordon Baker’s Report and Recommendation (“R & R”) (ECF Nos. 13 & 10). Magistrate Judge Baker recommends that this action be dismissed without prejudice because Petitioner’s 28 U.S.C. § 2254 petition is an unauthorized successive petition. Petitioner filed a number of objections, but only one relates to the reason for the Magistrate Judge’s recommendation of dismissal, namely his argument that this Court does in fact have jurisdiction over his petition in spite of the fact that it is successive. Petitioner is mistaken. “In the absence of pre-filing authorization from the court of appeals, the district court is without jurisdiction to consider a second or successive application.” *Hines v. South Carolina*, No. 6:16-cv-3386-HMH-KFM, 2017 WL 35448, at \*2 (D.S.C. Jan. 4, 2017) (citing *United State v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003)). Because Petitioner did not receive pre-filing authorization from the Fourth Circuit, this Court does lack jurisdiction over his petition.

For the foregoing reasons, the Court **OVERRULES** Plaintiff's objections to the R & R and **ADOPTS** the Magistrate Judge's recommendation that this action be dismissed without prejudice.<sup>1</sup>

**AND IT IS SO ORDERED.**

  
PATRICK MICHAEL DUFFY  
United States District Judge

**October 10, 2017**  
**Charleston, South Carolina**

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1. The Court declines to issue a certificate of appealability. Petitioner has not made a substantial showing of a denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336–38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); *Slack v. McDaniel*, 529 U.S. 474, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive procedural ruling is debatable, and that the petition states a debatably valid claim of the denial of a constitutional right).